JAYASANKARAN

v.

PUBLIC PROSECUTOR

FEDERAL COURT, KUALA LUMPUR
RAJA AZLAN SHAH LP
SALLEH ABAS FJ
ABDOOLCADER J
[CRIMINAL REFERENCE NO. 6 OF 1982]
6 DECEMBER 1982

CRIMINAL LAW AND PROCEDURE: *Reference to Federal Court - Whether appellant was in breach of s. 307 (ii) Criminal Procedure Code by not signing himself the petition of appeal - Question of law - Public interest.*

The question referred to the Federal Court under s. 66(1) of the Courts of Judicature Act 1964 was:

> Whether a petition of appeal signed by only the solicitor for the appellant acting on the authority of the appellant meet the requirements of s. 307 (iv) of the Criminal Procedure Code.

In this case, the appellant who was convicted of an offence under s. 465 of the Penal Code and bound over for 1½ years under s. 294 of the Criminal Procedure Code appealed against his conviction to the High Court. Both the appellant and his solicitors had signed the notice of appeal but the petition of appeal was signed only by his solicitor. The learned Judge had held on a preliminary point, taken by the learned Deputy Public Prosecutor that the appellant himself must sign the petition of appeal and struck out the appeal on the ground of non-compliance with sub-section (iv) of s. 307 of the Code.

The learned Judge in concluding that it was the accused person and not the solicitor who must sign the petition of appeal relied on Practice Note No. 2 of 1960 which was issued by the Chief Registrar on the direction of the Chief Justice to the effect that a notice of appeal and petition of appeal must be signed by the appellant himself, and where Counsel is retained, both the appellant and Counsel must sign the documents. He also relied on the decisions in *Pitting bin Hj. Mohd. Ali v. PP* [1979] 2 MLJ 136 and *Toh Yew Sing & Ors. v. PP* [1980] 2 MLJ 215.

Held:

[1] Practice Note No. 2 of 1960 was intended to be no more than a direction for administrative purposes. It cannot be exalted into a rule of law reflecting the true effect of the requirements of s. 307 of the Code, and if it was wrong, the position should be rectified.

[2] The two cases relied upon by the learned Judge were erroneous in as much as they had held that it was mandatory for the appellant to sign the petition of appeal, and they should not be followed.

[3] Neither s. 307 (i) of the Criminal Procedure Code nor subsection (iv) signifies the signatory to the notice or petition and does not provide for the appellant to do so ‘personally’ or ‘in person’ as some legislative enactments specifically prescribe. This therefore attracts the maxim *qui facit per alium facit per se* (he who does an act through another is deemed in law to do it himself).

[4] The question was accordingly answered in the affirmative and the appeal was reinstated for hearing.

[Question answered in the affirmative.]

Cases referred to:
Pitting bin Hj. Mohd. Ali v. PP [1979] 2 MLJ 136
Toh Yew Sing & Ors. v. PP [1980] 2 MLJ 215

Legislation referred to:
Courts of Judicature Act 1964, s. 66(1)
Criminal Procedure Code, ss. 294, 307 (i), (ii), (iii), (iv), (vii)
Penal Code, s. 465

Other sources referred to:
Practice Note, No. 2/60

For the appellant - R. R. Chelliah; M/s. R.R. Chelliah Bros.
For the respondent - Mohtar Abdullah, DPP

JUDGMENT

Raja Azlan Shah LP:

The question for reference under s. 66 (1) of the Courts of Judicature Act 1964 is:

> Whether a petition of appeal signed by only the solicitor for the appellant acting on the authority of the appellant meet the requirements of s. 307 (iv) of the Criminal Procedure Code.

While the reference is of course of great importance to the appellant, and no doubt to others similarly placed, the question whether the appellant was in breach of s. 307 (iv) of the Criminal Procedure Code by not signing himself the petition of appeal raises a question of law of public importance, and it was for that reason that leave was given to refer the question to us under s. 66(1) of the Courts of Judicature Act 1964 so that that question might be fully argued and determined, especially in the light of a number of recent decisions of the High Court on this issue the correctness of which have been challenged.

The facts can be shortly stated. The appellant was charged and convicted of an offence under s. 465 of the Penal Code and was bound over for 1½ years under s. 294 of the Criminal Procedure Code ("The Code"). He appealed against conviction. Both he and his solicitor signed the notice of appeal but only the solicitor signed the petition of appeal. The learned Judge held, on a preliminary point, that the appellant himself must sign the petition of appeal. He struck out the appeal on the ground of non-compliance with subsection (iv) of s. 307 of the Code.

The learned Judge seems to think that the words "any person who is dissatisfied with any judgment" in sub-section (i) of s. 307 of the Code when read in conjunction with the words "the appellant" in sub-section (iv) of the section can only refer to the accused person. He therefore concluded that the accused person and not the solicitor who must sign the petition of appeal. Sub-section (iv) of s. 307 of the Code reads as follows:

> Within ten days after the copy of the grounds of decision has been served as in the last preceding subsection provided, the appellant shall lodge with the clerk of the Magistrate's Court at which the trial was held a petition of appeal in triplicate addressed to the High Court.

The learned Judge relied on Practice Note No. 2 of 1960 which was issued some two decades previously by the Chief Registrar on the direction of the Chief Justice to the effect that a notice of appeal and petition of appeal must be signed by the appellant himself, and where Counsel is retained, both the appellant and Counsel must sign the documents. He also relied on the decisions in *Pitting bin Hj. Mohd Ali v. PP* [1979] 2 MLJ 136 and *Toh Yew Sing & Ors. v. PP* [1980] 2 MLJ 215. In the former case BTH Lee J held that Counsel or an advocate cannot sign a petition of appeal. So to read the provision of sub-section (iv) of s. 307 of the Code is to read into it a great deal that is not there. In the latter case Tan Chiaw Thong J held that a petition of appeal must be signed by the appellant. A petition of appeal signed by anyone else including an advocate on behalf of the appellant is not in compliance with the requirements of sub-section (iv) of s. 307 of the Code.

We are of the view that Practice Note No. 2 of 1960 was intended to be no more than a direction for administrative purposes. It cannot be exalted into a rule of law reflecting the true effect of the requirements of s. 307 of the Code, and if it is wrong then the position should be rectified. We think it is wrong.

We are also of the view that the two cases relied upon by the learned Judge were erroneous in as much as they held that it was mandatory for the appellant to sign the petition of appeal, and they should not be followed.

An appeal is instituted within the meaning of sub-section (i) of s. 307 of the Code when the appellant takes the initiative by lodging the notice of appeal in triplicate with the clerk of the Magistrate's Court which passed the judgment, sentence or order within the time prescribed. That, in our opinion, is a mandatory provision.

To lodge documents means to file or leave them with the appropriate official.

The notice of appeal shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate (sub-section (ii)). In most cases the appellant is represented by an advocate and invariably the address of the firm of the advocate is contained in the notice of appeal. Where the appellant is not represented by an advocate, his address must be shown in the notice of appeal for the purpose of service. Next, a signed copy of the grounds of decision is served upon the appellant if he is not represented by an advocate, at his address mentioned in the notice of appeal by leaving the said copy at the said address, or by posting it by registered post addressed to him at the said address.

If he is represented by an advocate, the signed copy is served upon him by leaving it or posting it by registered post at his address mentioned in the notice of appeal (sub-section (iii)).

The petition of appeal is then prepared as required by sub-section (iv) of s. 307 of the Code, which requires "the appellant" to lodge with the clerk of the Magistrate's Court the petition of appeal. In those cases above-mentioned the learned Judges held that the appellant himself must sign the petition of appeal.

In coming to their decisions the learned Judges were right in construing the words "the appellant" in the setting of the subsection, that is that the same word in the same section of a statute must be given the same meaning. But in our opinion this principle of construction is only one element in deciding the true intention of the section and it must not be carried too far lest we fail to see the wood for the trees. If the context excludes the application of this principle then it would be futile to apply it. Words take their colour from the context.

Section 307(i) of the Code which relates to the procedure for appeal provides for a dissatisfied party to prefer an appeal to the High Court by lodging a notice of appeal and sub-section (iv) stipulates the time for the appellant to lodge with the Subordinate Court a petition of appeal. Neither provision signifies the signatory to the notice or petition and does not provide for the appellant to do so 'personally' or 'in person' as some legislative enactments specifically prescribe. This therefore attracts the maxim *qui facit per alium facit per se* (he who does an act through another is deemed in law to do it himself). We are reinforced in our conclusion by the provisions of s. 307(vii) of the Code which enact that where the appellant is in prison he shall be deemed to have complied with the requirements of the section if he gives to the officer in charge of the prison either orally or in writing notice of appeal and the particulars required to be included in the petition of appeal within the prescribed time and on payment of the prescribed fee whereupon such officer shall forthwith forward the notice or petition or the purport thereof together with the appeal fee to the Subordinate Court. It is abundantly clear that in such a case the prison officer would be acting on behalf of the appellant in complying with the necessary statutory requirements for an appeal without the necessity for the appellant to sign the documents in question, and in the circumstances there is all the more reason to negate any justification for a constricted view in relation to an appellant fortunate enough not to be so confined.

We answer the question accordingly in the affirmative. The appeal is reinstated for hearing.

Also found at [1983] 1 CLJ 171